Supreme Court, U. S.
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No. 73-1541

In the Supreme Court of the United States

OCTOBER TERM, 1973

ROBERT REID AND NADIA ALICE REID, PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES

Petitioners, husband and wife, are aliens [1] who entered the United States at the Chula Vista, California, Port of Entry by falsely representing themselves to be United States citizens.[2] Thereafter, petitioners had two children, who became American citizens upon their birth in this country.

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[1] They are citizens of British Honduras.

[2] Petitioner Robert Reid entered on November 29, 1968, and petitioner Nadia Reid on January 3, 1969.

On November 22, 1971, petitioners were served with a Notice of Hearing and an Order to Show Cause, charging that they were deportable under Section 241(a)(2) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1251(a)(2), as aliens who had entered the United States without inspection as immigrants (Pet. App. 3). At the deportation hearing, petitioners conceded deportability. However, they moved for a termination of deportation proceedings under Section 241(f) of the Act, as amended, 8 U.S.C. 1251(f), and submitted the birth certificates of their two children born in the United States after their illegal entry.[3] The special inquiry officer found them deportable as charged and denied the application to terminate the proceedings (Pet. App. 4).[4] The Board of Immigration Appeals dismissed petitioners' appeal, holding that Section 241(f) does not apply to aliens who enter the United States on a false claim of citizenship (Pet. App. 5).

Petitioners then filed a petition for review challenging the Board's determination. On February 13, 1974, the United States Court of Appeals for the Second Circuit dismissed the petition, one judge dissenting (Pet. App. 1). The majority held that the legislative history showed that Section 241(f) was concerned with aliens who commit frauds while seeking to enter as such, and not with those aliens who enter under false claims of citizenship, and thus completely evade the immigration screening system established by other portions of the Act. The court further concluded that (Pet. App. 1-1762):

> In our view there comes a point where, in construing §241(f), the integrity of the immigration visa and inspection procedure outweighs the interest in giving relief to certain aliens who have entered this country by unlawful means and raised families here. We believe that that point has been reached here. When due consideration is given to the thousands of aliens who are required to follow the established screening process, it would be inequitable to expand §241(f) to benefit conduct that would wholly evade and stultify that process. The effect could be to encourage disregard for the immigration laws and to render them ineffective since no practical opportunity would be afforded [to] the I.N.S., in the case of an alien posing as a United States citizen, to conduct an investigation comparable to that mandated in the case of an immigrant seeking entry as such.

Petitioners contend that because their entry into the United States was gained by a fraudulent claim of citizenship and because they are parents of United States citizens, their deportation is waived by 8 U.S.C. 1251(f). We disagree with this contention for the reasons set forth in our petition for a writ of certiorari in *Immigration and Naturalization Service* v. *Echeverria*, No. 73-1917.[5] Nevertheless, since we agree with petitioners that this decision conflicts with the holdings of the Ninth Circuit in *Lee Fook Chuey* v. *Immigration and Naturalization Service*, 439 F. 2d 244, and *Echeverria*, we do not oppose this petition for a writ of certiorari. Instead, we suggest that

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[3] 8 U.S.C. 1251(f) provides that:

> The provisions * * * relating to the deportation of aliens * * * on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen * * *.

[4] Petitioners were granted the privilege of voluntary departure.

[5] We are sending petitioners a copy of that petition.

the Court either consider this case with *Echeverria*, or defer disposition of this petition pending the decision in *Echeverria*.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JUNE 1974.